



Paper No. 13

**GARVEY, SMITH, NEHRBASS & DOODY, LLC**  
**3838 N. CAUSEWAY BLVD., SUITE 3290**  
**METAIRIE LA 70002**

**COPY MAILED**

**JAN 29 2007**

**OFFICE OF PETITIONS**

In re Application of  
James E. Landry et al.  
Application No. 09/413,993  
Filed: October 7, 1999  
Attorney Docket No. 312.2

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 17, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement mailed November 30, 2001 which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on December 31, 2001.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks: item (3)

The file record shows that over 5 years and 8 months elapsed between the date of abandonment and the filing of the instant petition. A Notice of Abandonment was mailed to applicant on August 13, 2002. Due to the extended delay in filing the petition to revive, further information as to the cause of the delay between the date the applicant was first notified that the application was abandoned and the date a 37 CFR 1.137(b) petition was filed is required, along with information as to how such delay was "unintentional." Petitioner should submit:

(A) further information as to when the applicant (or applicant's representative) first became aware of the abandonment of the application; and

(B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative). See MPEP 711.03(c)

Please provide further information in regards to the above within TWO (2) MONTHS from the mail date of this decision.


Further correspondence with respect to this matter should be addressed as follows:

By Mail:           Mail Stop PETITION  
                      Commissioner for Patents  
                      P. O. Box 1450  
                      Alexandria, VA 22313-1450

By hand:           U. S. Patent and Trademark Office  
                      Customer Service Window, Mail Stop Petitions  
                      Randolph Building  
                      401 Dulany Street  
                      Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to Terri Williams at (571) 272-2991.

  
Amelia Au  
Petitions Examiner  
Office of Petitions

MRD 3-21-07

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT: James E. Landry                      DATE: March 21, 2007  
SERIAL NO.: 09/413,993                      GROUP ART UNIT: 1712  
FILED: October 7, 1999                      EXAMINER: Sellers, Robert E.  
FOR: "A Flexible Insulating Material and Method of Use"

ATTORNEY DOCKET NO.: A00308US (98417.1)

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**RENEWED PETITION UNDER 37 CFR 1.137(b)**

MAIL STOP PETITION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is a Renewed Petition to Revive for Unintentional Abandonment under 37 CFR 1.137(b) in response to the dismissal of the petition filed August 17, 2006.

This application went unintentionally abandoned for failure to reply in a timely manner to the Restriction Requirement mailed November 30, 2001. Applicant submits herewith the appropriate fees. Applicant submitted a Response on August 17, 2006 along with the Petition to Revive. The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The cause of the delay between the date Applicant was first notified that the application was abandoned and the date a 37 CFR 1.137(b) petition was filed is noted in the attached Declaration. As described in the Declaration, such delay was unintentional. Subsequent to filing the subject patent application, applicant experienced catastrophic and severe financial hardships which resulted in the delay in responding to the Office. In January, 2000, applicant's business was interrupted due to a fire completely destroying one of two buildings. From May, 2000 through February, 2002, a key employee embezzled money and damaged applicant's reputation. Applicant's attorney of record received the Notice of Abandonment on August 19, 2002 (see Cover Page for Paper No. 11 noting "received" and "docketed"). As a result of the embezzlement of funds, applicant was in a precarious financial status. In August, 2004, a primary customer filed for bankruptcy which further interrupted applicant's financial stability. Legal

action is currently pending against a potential buyer of applicant's business that breached its agreement to purchase after succeeding in hiring most of applicant's key employees.

**CONCLUSION**

Applicant respectfully submits that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Applicant respectfully submits that the application is in condition for allowance. A Notice of Allowance is hereby respectfully requested.

Should the Examiner feel that a telephone conference would advance the prosecution of this application, he is encouraged to contact the undersigned at the telephone number listed below.

Applicant respectfully petitions the Commissioner for any extension of time necessary to render this paper timely.

Please charge any additional fees due or credit any overpayment to Deposit Account No. 50-0694.

Respectfully submitted,

/jmd/

Gregory C. Smith, Reg. No. 29,441

Charles C. Garvey, Jr., Reg. No. 27,889

Seth M. Nehrbass, Reg. No. 31,281

Brett A. North, Reg. No. 42,040

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**APPLICANT:** James E. Landry

**DATE:** March 21, 2007

**SERIAL NO.:** 09/413,993

**GROUP ART UNIT:** 1712

**FILED:** October 7, 1999

**EXAMINER:** Sellers, Robert E.

**FOR:** "A Flexible Insulating Material and Method of Use"

**ATTORNEY DOCKET NO.:** A00308US (98417.1)

\*\*\*\*\*  
**DECLARATION**

I, James E. Landry, do hereby declare the following:

that I am the inventor of the patent application titled "A Flexible Insulating Material and Method of Use" filed on October 7, 1999 and bearing serial no. 09/413,993;

that this application went unintentionally abandoned for failure to reply in a timely manner to the Restriction Requirement mailed November 30, 2001;

that applicant submitted a Response on August 17, 2006 along with the Petition to Revive;

that this is a Renewed Petition to Revive for Unintentional Abandonment under 37 CFR 1.137(b) in response to the dismissal of the petition filed August 17, 2006;

that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional;

that the cause of the delay between the date I was first notified that the application was abandoned and the date a 37 CFR 1.137(b) petition was filed was due to catastrophic and severe financial hardships from which I have recently recovered;

that in January, 2000, my business was interrupted due to a fire completely destroying one of two buildings

that from May, 2000 through February, 2002, a key employee embezzled money and damaged my reputation;

that my attorney of record received the Notice of Abandonment on August 19, 2002 and forwarded the Notice of Abandonment to me;

that as a result of the embezzlement of funds, I was in a precarious financial status and unable to afford patent fees or attorney fees;

that in August, 2004, a primary customer filed for bankruptcy which further interrupted



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,993	10/07/1999	JAMES E. LANDRY	312.2	2682

7590 08/13/2002  
GARVEY, SMITH, NEHRBASS & DOODY, LLC  
3838 N. CAUSEWAY BLVD., SUITE 3290  
METAIRIE, LA 70002

EXAMINER

SELLERS, ROBERT E

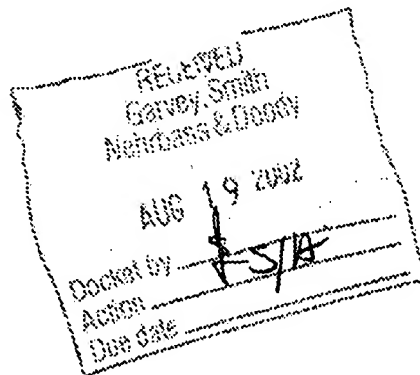
ART UNIT PAPER NUMBER

1712

DATE MAILED: 08/13/2002

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98417.1  
A0030843  
GCS

Please find below and/or attached an Office communication concerning this application or proceeding.



RECEIVED  
AUG 16 2002  
Garvey, Smith  
Nehrbass & Doody

## Electronic Patent Application Fee Transmittal

Application Number:	09413993			
Filing Date:	07-Oct-1999			
Title of Invention:	FLEXIBLE INSULATING MATERIAL AND METHOD OF USE			
First Named Inventor/Applicant Name:	JAMES E. LANDRY			
Filer:	Seth M. Nehrbass			
Attorney Docket Number:	312.2			
Filed as Small Entity				
<b>Utility      Filing Fees</b>				
Description	Fee Code	Quantity	Amount	Sub-Total In USD(\$)
<b>Basic Filing:</b>				
<b>Pages:</b>				
<b>Claims:</b>				
<b>Miscellaneous-Filing:</b>				
<b>Petition:</b>				
Petition-revive unintent. abandoned appl	2453	1	750	750
<b>Patent-Appeals-and-Interference:</b>				
<b>Post-Allowance-and-Post-Issuance:</b>				
<b>Extension-of-Time:</b>				

## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	1610144
<b>Application Number:</b>	09413993
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	2682
<b>Title of Invention:</b>	FLEXIBLE INSULATING MATERIAL AND METHOD OF USE
<b>First Named Inventor/Applicant Name:</b>	JAMES E. LANDRY
<b>Correspondence Address:</b>	GARVEY, SMITH, NEHRBASS & DOODY, LLC - 3838 N. CAUSEWAY BLVD., SUITE 3290 - METAIRIE LA 70002 US 504835-2070 -
<b>Filer:</b>	Seth M. Nehrbass
<b>Filer Authorized By:</b>	
<b>Attorney Docket Number:</b>	312.2
<b>Receipt Date:</b>	21-MAR-2007
<b>Filing Date:</b>	07-OCT-1999
<b>Time Stamp:</b>	11:36:17
<b>Application Type:</b>	Utility

### Payment information:

Submitted with Payment	yes
Payment was successfully received in RAM	\$750
RAM confirmation Number	1643